

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Rick V. Murakami et al.

Confirmation No. 4149

Application No. 09/814,607

Filed: March 22, 2001

For: **METHOD FOR BIOMETRIC
AUTHENTICATION THROUGH
LAYERING BIOMETRIC TRAITS**

Group Art Unit: 2131

Examiner: Aravind K. Moorthy

Attorney Docket No. 36360/1.14

Date: October 8, 2007

37 CFR § 1.132 Declaration of Larry V. Lunt

TO THE COMMISSIONER FOR PATENTS:

1. The U.S. Pat. App. No. 09/814,607 to Murakami, et al. (hereafter the "607 Application") was filed with Tarian LLC (hereinafter "Tarian") listed as the Assignee.

2. Tarian was set up by a group of investors with the specific object of promoting and exploiting the invention that is the subject of the above referenced patent application, and other allied inventions made by the same group of inventors.

3. I was the sole controlling member of Tarian.
4. I am a Brigadier General in the reserve forces of the United States Air Force. Immediately subsequent to the terrorist attacks on September 11, 2001, I was called up to fulfill my military responsibilities. I began duty immediately after the attacks of September 11, 2001 and continued fulfilling those duties until I retired in November of 2003.
5. As the senior commander of five operational air force units I had the responsibility for the training and deployment of over 1500 men and women both within the United States and overseas. My duties involved extensive traveling inside and outside the United States. This left me no time to continue the project for which I had invested in Tarian.
6. During my tour of duty, near the beginning of 2002, contact was made with another group of investors who also saw great potential in the invention. This group of investors styled themselves Union Recovery Corporation (hereinafter "URC"). URC expressed an interest in buying out the Tarian shareholders, and taking an assignment of the intellectual property owned by Tarian.
7. The Tarian investors made certain investigations to ascertain the ability of URC to be able to pay the cost of buying out the Tarian investors, and satisfied themselves, based on the known personal wealth of the URC investors, that URC had sufficient assets. One of the URC investors was Jason Kap, a senior member of Microsoft. Mr. Kap's position and standing at Microsoft was taken as sufficient confirmation of URC's ability to meet the commitments in the Asset Acquisition Agreement of 24 May 2002 (hereinafter "the Agreement").
8. Because of my military commitments, I had to deal with the negotiations and processing of this "sale" to URC quickly. Kevin Nelson, a minority interest holder in Tarian, handled all of the contact and negotiations with URC. I never spoke or interfaced with anyone from URC. The Agreement was signed on May 24, 2002.
9. Under Article 2.2 of the Agreement, the assets, including the intellectual property owned by Tarian concerning the '607 Application, were deemed assigned to URC as at the Closing Date (May 25, 2002). The agreement provided URC would make an initial payment 90 days after the Closing Date and subsequent payments on the anniversary of the Closing Date for six years.
10. Because of the deemed assignment, I assumed that URC would be continuing with the regular processing of the '607 Application, including responding to office actions and paying any fees which became due. URC had appeared fully committed to the project and the patent applications at the time the Agreement was signed.

11. Tarian's previous patent counsel, Kirton and McConkie (hereinafter "K&M"), was instructed by URC to continue processing the patent applications under the Agreement. K&M accepted those instructions and continued to act. Naturally, URC was to take over payment of legal fees for the regular processing of the patent applications.
12. On November 19, 2002, U.S. Patent Application No. 10/300,659 was filed by the URC investors. This filing supported my assumption that URC (a) intended to honor the Agreement, (b) believed the intellectual property to be patentable and valuable, and (c) would continue the regular processing of all the patent applications, including the '607 Application.
13. No payments were made at any time by URC or any of the URC investors to Tarian or the Tarian investors.
14. At the time the first payments were due to Tarian, in approximately August of 2002, I was fully occupied with my military duties, both in the United States and overseas, and the nature of my military duties made it difficult for me to take action to follow up on the unpaid monies from URC.
15. During October, November and December of 2002, a series of letters were sent to URC demanding performance and payment under the Agreement. URC never complied.
16. After retiring in November 2003, I continued under the impression that the assets, including the '607 Application, were in the control of URC.
17. Only after it became apparent that URC was not committed to the project, and was not going to honor the Agreement or make any payments under the Agreement, did I have reason to doubt the legitimacy of the assignment of assets.
18. In approximately December of 2004, K&M called me to inform me that they had foreclosed an attorney's lien on the assets in an action against URC to collect payment of attorney's fees. K&M called to inform me that they held ownership of the assets and planned to sell them and asked me if I was interested.
19. Ownership of the assets was not transferred back to an entity under my control until December 14, 2006. Shortly after I contacted my attorney to revive the '607 Application.
20. In light of the foregoing circumstances, any delay in processing the subject application resulted from my inability during my military responsibilities to track the progress of the subject application and my mistaken belief that I did not need

to track the progress of the subject application. Therefore, any such delay was unintentional.

21. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

Date: 5 Oct 07

A handwritten signature in cursive script, appearing to read "Larry V. Lunt", written over a horizontal line.

Larry V. Lunt
Ensign Holdings, LLC
275 East South Temple
Suite 250
Salt Lake City, UT 84111